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PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

IN THE MEDIA

Promoting privacy and information access rights through the pandemic

The work of the OAIC to uphold privacy and information access rights and strengthen online privacy protections is highlighted in its 2020–21 annual report published on 21 October 2021. <https://www.oaic.gov.au/updates/news-and-media/promoting-privacy-and-information-access-rights-through-the-pandemic>

OAIC publishes annual report on digital health

The independent privacy regulator for the My Health Record system and Healthcare Identifiers Service has detailed its compliance and monitoring activity in its 2020–21 digital health annual report. The annual report highlights the OAIC's work to ensure privacy measures for Australia's digital health systems are upheld. <https://www.oaic.gov.au/updates/news-and-media/oaic-publishes-annual-report-on-digital-health>

OAIC finds against 7-Eleven over facial recognition

Australian Information Commissioner and Privacy Commissioner Angelene Falk has determined that convenience store group 7-Eleven interfered with customers' privacy by collecting sensitive biometric information that was not reasonably necessary for its functions and without adequate notice or consent. <https://www.oaic.gov.au/updates/news-and-media/oaic-finds-against-7-eleven-over-facial-recognition>

Law Council launches National Security Committee

The Law Council of Australia has established a National Security Committee to guide its advocacy on the operation of Australia's laws, policies and practices as the domestic and global security environment evolves. <https://www.lawcouncil.asn.au/media/media-releases/law-council-launches-national-security-committee>

Appointment of judges to FCFCOA

The Law Council of Australia commends the Attorney-General, Senator the Hon Michaelia Cash for prioritising appointments to and resourcing of the Federal Circuit

and Family Court of Australia (FCFCOA). <https://www.lawcouncil.asn.au/media/media-releases/appointment-of-judges-to-fcfcOA>

Ransomware Initiative 2021

Australia has joined 31 countries from around the world to issue a joint statement recognising the escalating global threat of ransomware and agreeing to consider a range of actions in relation to resilience, countering illicit finance, disruption and other law enforcement efforts and diplomacy. <https://www.homeaffairs.gov.au/news-media/archive/article?itemId=700>

Rights groups call for stronger privacy protections in home quarantine apps

The Human Rights Law Centre and Digital Rights Watch have written to federal, state and territory health ministers calling for stronger privacy protections in the technology being used to support home quarantine trials. <https://www.hrlc.org.au/news/2021/10/7/rights-groups-call-for-stronger-privacy-protections-in-home-quarantine-apps>

NSW

Investigation into Eddie Obeid and Family

The NSW Crime Commissioner, Michael Barnes, committed the agency to revisiting its previous investigation into the confiscation of the proceeds of crime acquired by Eddie Obeid and his family. <https://www.crimecommission.nsw.gov.au/media/speeches-and-statements>

Common sense consent reforms closer to becoming NSW law

Common sense reforms to make sexual consent laws easier to follow and ensure more effective prosecutions of sexual offences will be introduced to NSW Parliament. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/common-sense-consent-reforms-closer-to-becoming-nsw-law>

Sentencing Council review to face frauds

The Department of Communities and Justice's (DCJ) NSW Sentencing Council has launched its independent review into sentencing for fraud and fraud-related offences. Mr Speakman said that each year more than 15,000 fraud and fraud-related offences went through NSW courts and there were more than 100 separate offence types. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/fraud-sentences-under-review>

ICAC finds former TAFE Western Sydney Institute managers corrupt over payments solicited and received for software deal

The NSW ICAC has found two former Western Sydney Institute of TAFE (WSI TAFE) managers engaged in serious corrupt conduct through soliciting and receiving close to \$450,000 from Oscillosoft Pty Ltd as an inducement or reward for favouring that company when sourcing software systems for WSI TAFE. <https://www.icac.nsw.gov.au/media-centre/media-releases/2021-media-releases/icac-finds-former-tafe-western-sydney-institute-managers-corrupt-over-payments-solicited-and-received-for-software-deal>

IN PRACTICE AND COURTS

Attorney-General Appointments

[Appointments to the Federal Circuit and Family Court of Australia \(Division 1\)](#)

[Appointments to the Federal Circuit and Family Court of Australia \(Division 2\)](#)

[Increased Resources for the Federal Circuit and Family Court of Australia Newcastle Registry](#)

Draft legislation for Australian Government Digital Identity System

The proposed legislation will enshrine in law, privacy and consumer safeguards for greater trust in the System as it expands. This includes more services and sectors, accelerating an economy-wide rollout. Submissions are open until 27 October 2021. Visit digitalidentity.gov.au/have-your-say for more information.

[Department of Infrastructure, Transport, Regional Development and Communications: Draft Online Safety \(Basic Online Safety Expectations\) Determination 2021 consultation](#)

We are seeking submissions on an exposure draft of the Online Safety (Basic Online Safety Expectations) Determination 2021. The draft determination sets out the government's demands for providers that offer a social media service, "relevant electronic service" or "designated internet service", including the nine principle-based "core expectations" included in the Act.

Law Council Submissions

18 October 2021— Business Law Section
[Second round of miscellaneous amendments to Treasury portfolio laws 2021](#)

18 October 2021— Law Council
[Independent Panel Review request for consultation on the insolvent trading safe harbour](#)

16 October 2021— Business Law Section
[Exposure Draft Customs Amendments \(Controlled Trials\) Bill 2021](#)

[Law Council Update - 15 October 2021](#)

The Law Council produces a fortnightly newsletter which highlights the Law Council's important activities and advocacy, along with any relevant media and events stakeholders would be interested in.

[AAT: In-person hearings in our Canberra, Melbourne and Sydney registries](#)

Until further notice, in-person hearings in our Canberra, Melbourne and Sydney registries will only proceed when all parties, representatives and other participants are willing to show evidence that they have been fully vaccinated.

[AAT Bulletin - Issue No. 21/2021, 18 October 2021](#)

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions.

Australian Human Rights Commission Consultation

[Have your say in a National Anti-Racism Framework](#) 20 October 2021. Submissions are open from 21 October to 15 December 2021.

Legal and Constitutional Affairs Legislation Committee

[The performance and integrity of Australia's administrative review system](#)

[Crimes Amendment \(Remissions of Sentences\) Bill 2021](#)

On 6 October 2021 the committee's reporting date was extended to 5 November 2021.

[The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing \(AML/CTF\) regime](#) Report by 2 December 2021.

[Constitution Alteration \(Freedom of Expression and Freedom of the Press\) 2019](#)

Status: Accepting Submissions Date Referred: 17 June 2021 Submissions Closed: 20 August 2021 Reporting Date: 31 December 2021

Select Committee on Foreign Interference through Social Media

[Foreign Interference through Social Media](#)

Select Committee on Foreign Interference through Social Media to inquire into and report on the risk posed to Australia's democracy by foreign interference through social media. The committee is to present its final report on or before the second sitting day of May 2022 The closing date for submissions is 31 October 2021.

Consultation on review of the Workplace Gender Equality Act 2012

The Workplace Gender Equality Agency (WGEA) has invited feedback on a review of the law covering workplace gender equality in Australia, on an issued a consultation paper which covers the current legislation, enshrined in the Workplace Gender Equality Act 2012, as well as gender indicators and continuing employer reporting obligations. Submissions close on 24 November and further information can be accessed on the PM&C website at this [PS News link](#).

NSW

[IPC NSW: United Nations Day 24 October 2021](#)

The IPC supports United Nations Day on 24 October 2021

[NSW Land and Environment Court](#)

[New Acting Commissioner Appointments](#)

[NSW Court of Appeal Publications](#)

The NSW Court of Appeal has published its latest [NSWCA Decisions before the High Court as at 14 October 2021](#)

[NSW Supreme Court](#)

[Updates to protocols for Real Property + Commercial, Technology & Construction Lists](#)

Updated protocols have been issued for the following Supreme Court Lists: The [Real Property List](#); and the [Commercial, Technology & Construction List](#).

[ICAC: Prosecution briefs with the DPP and outcomes](#)

The tables on this page each provide information on prosecution briefs that are currently with the Director of Public Prosecutions (DPP), and the outcomes of DPP advice and prosecutions.)

[NSW ICAC: Further Operation Keppel public inquiry starts](#)

The NSW ICAC Operation Keppel further public inquiry will started on 18 October 2021.

The Commission is investigating whether, between 2012 and 2018, the Hon Gladys Berejiklian MP engaged in conduct that: constituted or involved a breach of public trust by exercising public functions in circumstances where she was in a position of conflict between her public duties and her private interest.

PUBLISHED – ARTICLES, PAPERS, REPORTS

[2020–21 annual report](#)

Australian Information Commissioner: released 18 October 2021. The OAIC made 17 privacy complaint determinations and issued 54 Information Commissioner review decisions that set precedents and provide guidance to other regulated entities.

[2020–21 digital health annual report](#)

Australian Information Commissioner: released 21 October 2021.

The OAIC received and finalised seven complaints in relation to the My Health Records system, and received and finalised one complaint relating to the Healthcare Identifier Service. The OAIC was notified of two data breaches involving the My Health Record system.

[Australian Government Grants Reporting](#)

ANAO Report No 7: 19 October 2021

The objectives of this information report are to provide transparency of, and insights on, government grants expense and Commonwealth entities' self-reporting of grants on GrantConnect. By value, most grants (42 per cent) were awarded through a closed non-competitive selection process. However, ad hoc/one-off grants were the most numerous (24 per cent).

[Management of the Civil Maritime Surveillance Services Contract](#)

ANAO Report No 6: 11 October 2021

The audit objective was to assess whether the Department of Home Affairs is effectively managing the Civil Maritime Surveillance Services contract.

[Commonwealth Ombudsman Annual Report 2020-21](#)

Annual Report for 2020-21: 22 October 2021

[Justice John Logan RFD, 'The efficient disposal of cases after COVID-19' \(2021\)](#)

Delivered at the Commonwealth Magistrates' and Judges' Association - Virtual conference, on 13 September 2021. Justice John Logan RFD, 'The efficient disposal of cases after COVID-19' (2021).

[Justice James Edelman, 'Original constitutional lessons: marriage, defence, juries, and aliens' \(2021\)](#)

This is the edited text of the Lucinda lecture given virtually at Monash University Law School on 19 August 2021.

CASES

[Antonio Di Lristi v NSW Public Trustee and Anor \[2021\] NSWSC 1347](#)

ADMINISTRATIVE LAW – Particular administrative bodies – NSW Civil and Administrative Tribunal – Appeal against two decisions of the Guardianship Division the NSW Civil and Administrative Tribunal APPEALS – Procedural fairness – Whether the Tribunal's rejection of the plaintiff's request for an adjournment was a breach of the rules of procedural fairness – Whether the Tribunal failed to comply with the requirements of s.38(5) of the Civil and Administrative Tribunal Act 2013 (NSW) by failing to give the plaintiff a reasonable opportunity to be heard such as to amount to a constructive failure to exercise the jurisdiction under s 25(2)(a) and (b) of the Guardianship Act 1987 (NSW) – Whether the Tribunal in limiting the presentation time of the plaintiff's case was a denial of procedural fairness – Whether there was no evidence to support a finding of the Tribunal – Whether rejecting certain evidence denied the plaintiff a fair hearing.

[ERT v Secretary, Department of Communities and Justice \[2021\] NSWCATAD 307](#)

ADMINISTRATIVE LAW – jurisdiction of the Tribunal – whether Tribunal has power to consider applications for grants of private funding for legal counsel under the (NSW) Children and Young Persons (Care and Protection) Act 1998 ERT v Secretary, Department of Communities and Justice [2021] NSWCATAD 307.

[Hickey v Secretary, Department of Education \[2021\] NSWCATAD 306](#)

ADMINISTRATIVE LAW – administrative review – Government information – refusal to deal with application – whether substantial and unreasonable diversion of agency's resources – consideration of ss 60(3A) and (3B) factors Hickey v Secretary, Department of Education [2021] NSWCATAD 306.

[Polar Cones Pty Ltd v Randwick City Council \[2021\] NSWLEC 1640](#)

ACTIVITY APPEAL – mobile food van – conciliation conference – agreement between the parties – orders.

[STAR Training Academy Pty Ltd v Commissioner of Police \[2021\] NSWCATOD 166](#)

ADMINISTRATIVE REVIEW – holder of a security licence – revocation of an approval under s 27A of the Security Industry Act to conduct training – whether an administratively reviewable decision.

[Elali v Department of Customer Service \[2021\] NSWCATAD 302](#)

HUMAN RIGHTS – discrimination – equal opportunity – leave required for complaint to proceed – principles applying to grant of leave.

[Myers v Registrar of Births, Deaths and Marriages \[2021\] NSWCATAD 300](#)

ADMINISTRATIVE LAW – Administrative Review – review decision of Registrar of Births, Deaths and Marriages not to amend particulars of death to show that deceased did not have a de facto partner – meaning of de facto partner – s 21C of the Interpretation Act 1987 – consideration of whether deceased had a de facto partner - decision of Registrar affirmed.

[Kassam v Hazzard; Henry v Hazzard \[2021\] NSWSC 1320](#)

PUBLIC HEALTH ACT – COVID-19 – public health orders made under s 7(2) of the Public Health Act – orders designate certain areas of concern and restrict movement out of the home and out of the area – authorised workers able to leave area of concern but only if vaccinated – orders allow residents of area of concern to enter and remain on construction sites but only if vaccinated. ADMINISTRATIVE LAW – proof of basis upon which Minister for Health acted – Minister did not give evidence – part of documents relied on subject of public interest immunity claim as documents produced to sub-committee of cabinet - whether Jones v Dunkel inference or Blatch v Archer reasoning available against Minister and State – position of Ministers with competing responsibilities – no adverse inference available – Blatch v Archer reasoning not available ADMINISTRATIVE LAW – grounds of challenge – relevant considerations – how derived and how framed – procedural fairness – no obligation to afford procedural fairness in making public health orders affecting a vast number of persons – not proven that making of orders was not a genuine exercise of the Minister’s power – unreasonableness – adducing of evidence to undermine factual basis for making of orders – decision to make orders informed by policy considerations – whether differential treatment of unvaccinated persons consistent with objects of Public Health Act – all grounds of review rejected. CONSTITUTIONAL LAW – whether orders and section 7 of the Public Health Act rendered invalid by s 51(xxiiiA) of the Constitution – orders do not create any form of civil conscription in the provision of medical and dental services – s 51(xxiiiA) does not limit legislative power

of the States – no joint scheme with Commonwealth to effect civil conscription – neither orders or Public Health Act dependent for its operation on any joint scheme with Commonwealth – argument untenable – no inconsistency between orders, Public Health Act and Australian Immunisation Register Act 2015

[Wojciechowska v Secretary, Department of Communities and Justice \[2021\] NSWCATAD 298](#)

ADMINISTRATIVE LAW - access application – freedom of information - review of decision of a government agency - information not held – reasonableness of searches – deletion of CCTV footage - CCTV retention periods CONSTITUTIONAL LAW – jurisdiction of the Tribunal - whether application for administrative review of a reviewable decision of an agency under the GIPA Act is a matter between a State and a resident of another State – Tribunal not a Chapter III court - question whether Tribunal is exercising federal jurisdiction - whether Tribunal exercising judicial power or administrative power on administrative review under the GIPA Act PRACTICE AND PROCEDURE – apprehended bias – principles - applications for disqualification.

[EOK v Northern Beaches Council \[2021\] NSWCATAD 297](#)

ADMINISTRATIVE LAW – privacy – alleged delay in providing access to information – disclosure of personal information – whether contravention of information protection principles – whether non-compliance otherwise permitted – whether action should be taken.

[Montessori Stars Pty Ltd v Secretary, Department of Education \[2021\] NSWCATAD 295](#)

ADMINISTRATIVE LAW- Education and Care Services National Law – review of decision to refuse provider approval - Objects and Principles of National Law – Children – Childcare Services – Administrative review jurisdiction – correct and preferable decision - whether the Tribunal should uphold and confirm the decision or substitute decision. Montessori Stars Pty Ltd v Secretary, Department of Education [2021] NSWCATAD 295.

[DTN v Commissioner of Police, NSW Police Force \(No 2\) \[2021\] NSWCATAD 294](#)

PRIVACY – personal information - health information - use – security of storage – disclosure – accuracy – request for amendment – content and context of personal information – whether a ‘live issue’ – whether about an individual’s suitability for appointment or employment – exceptions to limits on disclosure.

LEGISLATION

Commonwealth

[Telstra Corporation and Other Legislation Amendment Bill 2021](#)

The Bill proposes a number of amendments to provide certainty that important consumer safeguards, notably the universal service obligation and Telstra’s obligations in relation to emergency call services, will continue to be delivered in an equivalent manner.

[Australian Federal Integrity Commission Bill 2021](#)

22 October 2021 - AFIC will have appropriate powers of assessment, investigation, and referral to enable clear, proportionate, and practical responses to allegations of serious and/or systemic corruption issues at the federal level in the public interest, with comprehensive procedural fairness and whistleblower safeguards.

[Spam Amendment \(Unsolicited Political Communications\) Bill 2021](#)

The Spam Amendment (Unsolicited Political Communications) Bill 2021 (the Bill) proposes to amend the Spam Act 2003 (Spam Act) and the Commonwealth Electoral Act 1918 (Electoral Act). The purpose of the Bill is to provide consumers with more control over the receiving of unsolicited electronic and telephone communication from political parties by addressing exemptions to laws that otherwise prohibit or limit spam communication.

[Statute Law Amendment \(Prescribed Forms\) Bill 2021](#)

The main purpose of this Bill is to reduce the number of provisions on the statute book that require the use of forms that are prescribed by regulations. The amendments will enhance administration and promote consistency across the Commonwealth statute book. The amendments are minor in nature.

[Commonwealth Electoral Amendment \(Integrity of Elections\) Bill 2021](#)

Introduced and read a first time 18 October 2021 - Amends the: Commonwealth Electoral Act 1918 to: provide for the routine independent auditing of authorised electronic technology used at federal elections; and require voter identification for electors to vote in federal elections; and Intelligence Services Act 2001 to make consequential amendments.

[Courts and Tribunals Legislation Amendment \(2021 Measures No. 1\) Bill 2021](#)

Introduced and read a first time 18 October 2021 - The purpose of this omnibus Bill is to make a number of administrative amendments to improve the operation and clarity of various legislation.

[Public Governance, Performance and Accountability Amendment \(Improved Grants Reporting\) Bill 2021](#)

Amends the Public Governance, Performance and Accountability Act 2013 to provide for reporting and tabling requirements for certain grants which have been approved by a minister based on an application which an official has recommended should be rejected or does not meet relevant selection criteria or which have been approved by a minister, who is a member of the House of Representatives, for a grantee in their electorate.

Act Compilation

[Marriage Act 1961](#)

Act No. 12 of 1961 as amended

[Tobacco Advertising Prohibition Act 1992](#)

22/10/2021 - Act No. 218 of 1992 as amended

[Law Enforcement Integrity Commissioner Act 2006](#)

22/10/2021 - Act No. 85 of 2006 as amended

[Telecommunications \(Interception and Access\) Act 1979](#)

20/10/2021 - Act No. 114 of 1979 as amended

[Commonwealth Electoral Act 1918](#)

18/10/2021 - Act No. 27 of 1918 as amended

[Australian Human Rights Commission Act 1986](#)

18/10/2021 - Act No. 125 of 1986 as amended

[Federal Proceedings \(Costs\) Act 1981](#)

15/10/2021 - Act No. 23 of 1981 as amended

[Public Interest Disclosure Act 2013](#)

12/10/2021 - Act No. 133 of 2013 as amended

[Surveillance Devices Act 2004](#)

11/10/2021 - Act No. 152 of 2004 as amended

Regulations

[High Court of Australia \(Building and Precincts—Regulating the Conduct of Persons\) Amendment Directions 2021](#)

This instrument amends the High Court of Australia (Building and Precincts—Regulating the Conduct of Persons) Directions 2021 to make clear that the proscriptions in paragraphs 5(i) and 5(xii) do not apply to public protest or other assembly except in certain circumstances and to remove a redundant reference in the Table of Directions.

[Marriage Amendment \(2021 Measures No. 1\) Regulations 2021](#)

The purpose of the Marriage Amendment (2021 Measures No. 1) Regulations 2021 (the Regulations) is to update the Marriage Regulations to ensure their clear and efficient operation. This includes: amendments to assist with the efficient administration of the Marriage Celebrants Program; consequential amendments to the Marriage Regulations arising from amendments to the Act made by the Marriage Amendment (Definition and Religious Freedoms) Act 2017 and by the Civil Law and Justice Legislation Amendment Act 2018 (CLJLAA).

NSW

Regulations and other miscellaneous instruments

[Fair Trading Amendment \(Code of Conduct for Short-term Rental Accommodation Industry\) Regulation \(No 2\) 2021](#) (2021-615) — published LW 22 October 2021.

[Local Government \(General\) Amendment \(Elections\) Regulation 2021](#) (2021-617) — published LW 22 October 2021.

Bills introduced Government – 22 October 2021

[Crimes Legislation Amendment \(Sexual Consent Reforms\) Bill 2021](#)
[Crimes Legislation Amendment Bill 2021](#)
[Customer Service Legislation Amendment Bill 2021](#)

Bills revised following amendment in Committee – 22 October 2021

[Better Regulation Legislation Amendment \(Miscellaneous\) Bill 2021](#)
[Constitution Amendment \(Virtual Attendance\) Bill 2021](#)

Bills passed by both Houses of Parliament – 22 October 2021

[Better Regulation Legislation Amendment \(Miscellaneous\) Bill 2021](#)
[Local Government Amendment \(COVID-19—Elections Special Provisions\) Bill 2021](#)

Bills introduced Government – 15 October 2021

[Local Government Amendment \(COVID-19—Elections Special Provisions\) Bill 2021](#)
[Modern Slavery Amendment Bill 2021](#)
[Public Interest Disclosures Bill 2021](#)

Non-Government – 15 October 2021

[Companion Animals Amendment \(Puppy Farms\) Bill 2021](#)
[Constitution Amendment \(Virtual Attendance\) Bill 2021](#)
[Crimes Amendment \(Display of Nazi Symbols\) Bill 2021](#)
[ICAC and Other Independent Commissions Legislation Amendment \(Independent Funding\) Bill 2021](#)
[Voluntary Assisted Dying Bill 2021](#)

KEY CONTACTS

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HELP DESK SERVICES

Thomson Geer is delighted to offer access to NSW Government to its Legal Help Desk on our usual terms of engagement and as set out below.

Scope

We are pleased to be able to work collaboratively with NSW Government to offer the following services (at no charge):

- advice regarding discrete and non-complex legal queries – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate or, short written advice (max. 1 page);
- the opportunity to ‘brainstorm’ or discuss topical and complex legal issues with industry specialists – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate; and
- advice regarding potential transactions – up to 30 minute

Thomson Geer is:

- appointed to Sub Panels 1-6 of the NSW Government Legal Services Panel; and
- particularly recommended for the following areas of law:

Sub Panel 1: Construction	Sub Panel 2: Commercial	Sub Panel 3: Planning, Property and Environmental	Sub Panel 4: Employment, Work Health and Safety	Sub Panel 5: Government Regulatory and Administrative Law	Sub Panel 6: Litigation and Inquiries
(a) Construction b) Major infrastructure projects c) PPPs and associated transactions d) Construction related dispute resolution and arbitration	(a) Commercial and contractual matters c) Intellectual Property d) Information Technology	(a) Complex property advice, transactions and accreditation b) Routine property advice and transactions c) Planning, environmental, heritage and natural resources e) Crown land and local government	(a) Employment and industrial relations e) Discrimination	a) Administrative law, statutory interpretation and governance advice	b) General litigation, dispute resolution and debt recovery

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